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IN THE

Supreme Court of the United States

October Term, 1968

No. 420

DENNIS HENRY LORAINE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

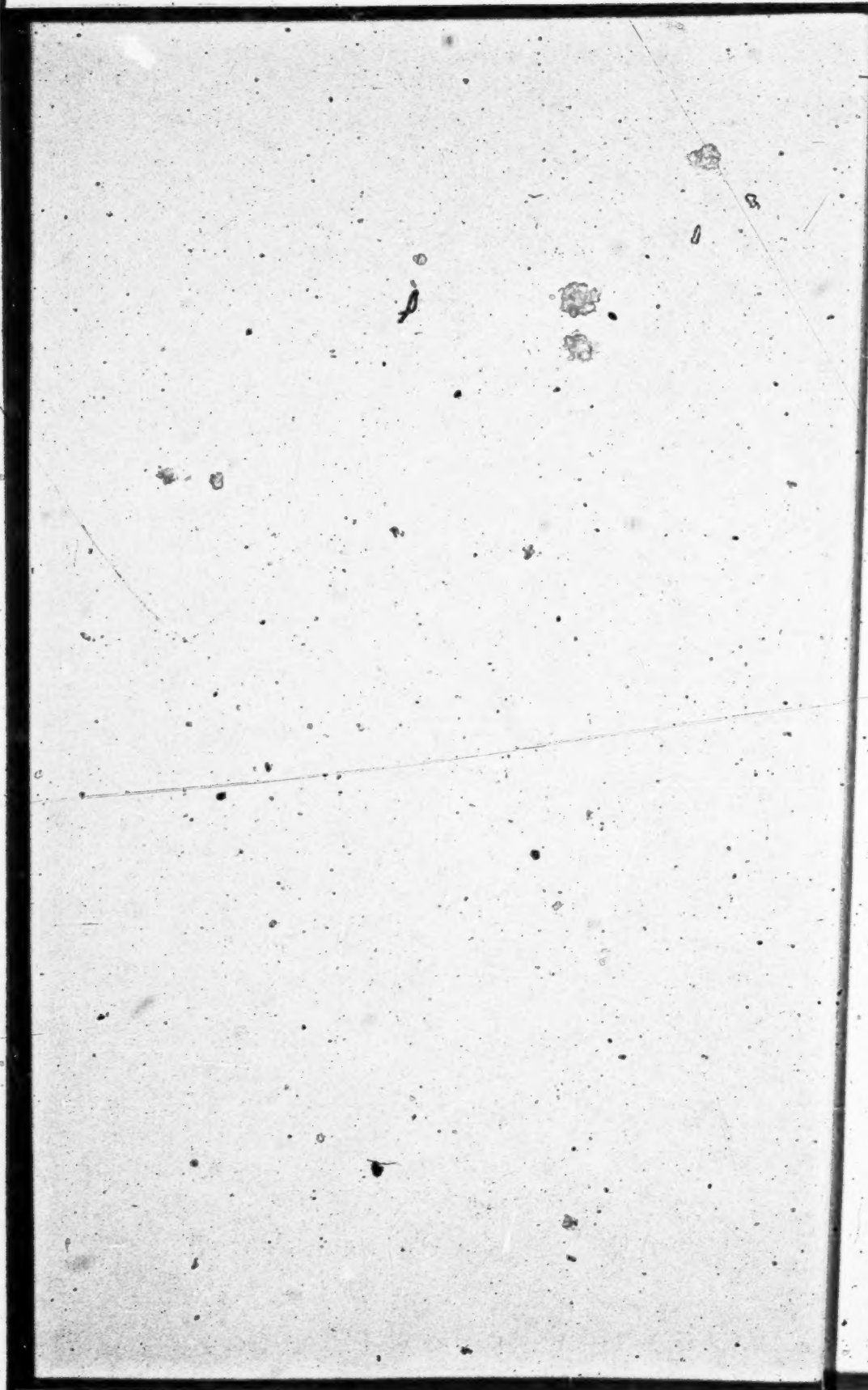
Respondent.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals
For The Ninth Circuit

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TOPICAL INDEX

	Page
Opinions Below	2
Grounds On Which The Jurisdiction Of This Court Is Invoked	2
Statutes Involved	2
Constitutional Provisions Involved	4
Questions Presented For Review	4
Summary Of The Evidence	5
For the Government:	
James McKee	5
Max Desatnick	8
Richard Randall	10
Robert Terry	12
Thomas Chambers Windsor Roe	15
Evidence re phone calls	16
Darwin David Horn	16
For the Defense:	
Dennis Henry Loraine	16
Charles A. Alecoat (for Friedland)	25
Robert Terry (recalled)	26
Frank Young Grafer	26
Peter Van Der Hurk	26
Stephan Farb	27
Edward L. Friedland (for Friedland)	27
For the Government:	
L. E. Boggs	28
Argument	29
I	
The court erred in holding that the evidence was sufficient to support the verdict of guilty pertaining to Count One (Conspiracy)	

TOPICAL INDEX

Argument I (cont'd) — Page

and Count Three (Transfer and Delivery) 29

II

Petitioner was denied a fair trial and due process by the suppression of evidence and failure of the prosecution to disclose evidence favorable to petitioner's defense 33

III

Petitioner was denied a fair trial and due process by the introduction of evidence by the prosecution calculated to degrade petitioner and hold him up to obliquity . 34

IV

The petitioner was denied a fair trial and due process by the unfair, inaccurate and untruthful publicity incident to the trial 37

Conclusion 38

TABLE OF AUTHORITIES CITED

Cases

Alfred v. United States, 282 U.S. 687 9

Benton v. United States, 233 F.2d 491 36

Brady v. Maryland, 373 U.S. 83 32

Delaney v. United States (1 Cir.) 199 F.2d 107 37

TABLE OF AUTHORITIES CITED

Cases (cont'd)	Page
Dickerson v. United States, 18 F.2d 887	32
Estes v. Texas, 381 U.S. 532	37, 38
Giles v. Maryland, 386 U.S. 66	32, 33
Ingram v. United States, 360 U.S. 672	32
In re Murchison, 349 U.S. 133	38
Krulevitch v. United States, 336 U.S. 440	32, 34
Michelson v. United States, 335 U.S. 469	35
Oliver v. United States, 121 F.2d 245	32
Pereira v. United States, 347 U.S. 1	32
Ramirez v. United States, 294 F.2d 277	9
Sheppard v. Maxwell, 384 U.S. 333	37, 38
Sunderland v. United States, 19 F.2d 202	36, 37
United States v. Sansone, 206 F.2d 86	37

Statutes	
18 U.S.C. 371	1, 3
18 U.S.C. 471	2, 3
18 U.S.C. 472	2, 3, 4, 19
18 U.S.C. 473	2, 4, 19
28 U.S.C. 1254(a)	2
28 U.S.C. 2101(c)	2

TABLE OF AUTHORITIES CITED

Rule	Page
Rule 22(c) U.S.Supreme Court	2

Text	
15A C.J.S. 732	32
1 Wigmore, Evidence, 3d Ed. (1940) 57	36

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals For The Ninth Circuit

Petitioner, Dennis Henry Loraine, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit to review its judgment affirming a judgment of the United States District Court for the Central District of California, *i.e.*, affirming a conviction on three counts, to wit: (1) conspiracy, under 18 U.S.C. 371, to defraud, pass, utter, publish, sell, possess, conceal and to buy, sell, exchange,

etc. counterfeit government obligations in violation of 18 U.S.C. 471, 472; (2) violation of 18 U.S.C. 472, possessing and concealment of counterfeit government obligations; and (3) violation of 18 U.S.C. 473, transfer and delivery of counterfeit government obligations.

OPINIONS BELOW

Trial was by jury, and no opinion was written by the trial court.

The opinion of the Circuit Court was rendered on June 4, 1968, and is not yet officially reported. A copy of the said opinion is attached hereto as Appendix "A."

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. The date of the judgment sought to be reviewed is June 4, 1968, and the time of entry is the same.

2. A petition for rehearing was timely filed and was denied on ~~June 19, 1968.~~ July 18, 1968

3. The statutory provisions believed to confer on this Court jurisdiction to review the judgment by writ of certiorari are 28 U.S.C. 1254(a) and 2101(c) and Rule 22(c) of this Court.

STATUTES INVOLVED

The petitioner was convicted under the provisions of Title 18, Sections 371, 471, 472, and 473 U.S.C., the pertinent provisions of which are as follows:

18 U.S.C. 371 Conspiracy to commit offense or to defraud United States

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

18 U.S.C. 471 Obligations or securities of United States

"Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

18 U.S.C. 472 Uttering counterfeit obligations or securities

"Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United

States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

18 U.S.C. 473 Dealing in counterfeit obligations or securities

"Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides in pertinent part:

"No person shall be . . . deprived of life, liberty or property without due process of law; . . ."

QUESTIONS PRESENTED FOR REVIEW

1. Whether, as we contend, the trial court erred in denying motions of petitioner for acquittal and for a new trial due to the insufficiency of evidence.

2. Whether the petitioner was denied a fair trial and due process by the suppression of evidence and failure to disclose evidence favorable to petitioner's defense.

3. Whether the petitioner was denied a fair trial and

due process by the introduction of evidence by the United States Attorney calculated to degrade the petitioner and hold him up to obliquity.

4. Whether the petitioner was denied a fair trial by reason of the unfair, inaccurate, and untruthful publicity incident to the trial.

SUMMARY OF THE EVIDENCE[1]

The charges in this matter cover a period of time commencing in late April of 1965 through July, 1965, and allegedly, the following persons were involved: Dennis Henry Loraine, Edward S. Friedland, Richard Randall, Robert James Terry and Thomas Chambers Windsor Roe.

For The Government:

James McKee testified that he was an accountant for Loraine and the Cadco Company, also Royal Victoria Sausages. Loraine had left Cadco in August of 1964 and was thereafter connected with Anglo-Italia Productions, making films in Rome. In June of 1965, McKee met Loraine and Randall in Rome; they then went to Cannes. (R.T. 150-164) Loraine told him Roe was in financial difficulties and that Roe had asked Loraine for help. Loraine told him he knew where he could buy U.S. dollars at a discount and perhaps could pass them on to Roe. In July, Friedland had said he had a source of supply of notes, and Loraine asked him to contact Friedland and look at them; if they did not appear to be genuine to refuse them. (R.T. 174-175)

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[1] In referring to the Reporter's Transcript of the Proceedings, as to the place where the testimony of the various witnesses may be found, we have designated the same by "R.T." and thereafter have given the page location.

Loraine asked him to meet a Mr. Sorenson at Kennedy Airport, which he did. Sorenson gave him two envelopes, one containing $10,000 and one $2,000, for buying an interest in Film Daily. (R.T. 187) The $2,000 was for office expenses for Union Film Distributing. He took the $10,000 to Friedland and got a receipt for an additional escrow. Later, he talked with Loraine, who was in Los Angeles, and Loraine asked if he had seen the currency in Friedland's office. (R.T. 188-196) There was no discussion as to the nature of the currency at that time. (R.T. 199) He went to Friedland's office, saw Desatnick there, and Desatnick showed him a $10 bill and said it was bad, that it would not serve Loraine's purpose. (R.T. 200-204) [An objection by Attorney Belli for Loraine was overruled.] Desatnick produced another $10 bill which he said was good. (R.T. 205-206) He called Loraine in Los Angeles and told him the notes were no good. Loraine said, "Forget it. Get $20,000 escrow back from Friedland." (R.T. 207-208) Friedland said he could have $10,000 back but the other $10,000 was in a bank and not readily available. (R.T. 209-210) Friedland gave him $10,000 cash back and the other $10,000 from a bank vault. Loraine told him to send it back with Sorenson. (R.T. 210-217) Later in the day, Friedland called and said he had a new source of notes which were good. He then told Friedland that Loraine said he was no longer interested and did not want them. He talked to Loraine, and Loraine told him to go look and see if they were good or bad. (R.T. 217-220) He then went to Friedland's office, and they did look good to him, but after the defects were pointed out to him, he called Loraine and advised him not to take the bills. (R.T. 222) At none of the conversations did Loraine mention counterfeit lira. (R.T. 224-226) Loraine told him

that Terry had been arrested for carrying counterfeit to Switzerland. (R.T. 299)

Cross-Examination: When Loraine told him to go to Friedland's office to look at bills, Loraine said nothing about looking for counterfeit bills or buying counterfeit. (R.T. 302) At Cannes, Loraine referred to discount dollars but not to counterfeit. (R.T. 307-310) Loraine had had him go to New York on legitimate business to investigate several companies. (R.T. 311) Loraine never introduced him to Chester Gray. (R.T. 317) He had several conversations via telephone with Loraine and in none was the subject of counterfeit mentioned. (R.T. 322) He had been to Friedland's office several times in the ordinary course of business. On July 31st he talked with Loraine and Loraine told him that he had been arrested and that Roe had been arrested in Switzerland for trying to pass counterfeit money, that Roe was blaming him. (R.T. 330) At one time he had warned Loraine against Roe. (R.T. 334) He had never seen Loraine with or in the presence of or exhibiting any counterfeit money. He never saw Loraine with Terry until in court. (R.T. 334) To his knowledge, Loraine had never met Desatnick. (R.T. 335) He never told Desatnick that he was in Friedland's office for Loraine. (R.T. 336) Loraine was never in Friedland's office. (R.T. 364) He told Loraine that Roe was bent on Loraine's destruction. Loraine told him Roe was acting insanely, was contemplating suicide. (R.T. 377-389) In the telephone call from Friedland on July 1st, counterfeit was not mentioned. In Friedland's office no mention of counterfeit was ever made. (R.T. 388-389) When he met Desatnick, counterfeit was not mentioned. He was not afraid of Loraine personally and had been friendly with Loraine up until the time of the arrest. (R.T. 664)

Max Desatnick testified that in June, 1965, he was in Friedland's office and heard a conversation that Irving Richards was having over the phone, stating to an unknown person that he was able to get counterfeit money. Friedland was not present. (R.T. 726-730) He later told Friedland what he had overheard, and Friedland told him that some fellow by the name of Dennis was looking for counterfeit. (R.T. 726-734) He told Friedland he thought he could get some. Friedland said, "Let's take a ride to Dick Randall's office . . . Randall represents Dennis here in the East." (R.T. 748-750) He told Friedland that he would like some front money or money in escrow. They went to Randall's office and Friedland introduced him to Randall. Randall said he would wire Dennis for $10,000. McKee came in, and Randall said if he located anything he should get in touch with McKee. (R.T. 751-754) Nothing was said specifically referring to counterfeit money. (R.T. 754) Later, Friedland said he got the money, and he (Desatnick) said, "Let's cut it up. I can't get any counterfeit . . . I was just doing this for you figuring you and I could wind up with 5,000 each." (R.T. 756-757) Friedland said he could not, "because he had to sign for this money." At that time he did not know actually where he could get any counterfeit. He made no effort to find any counterfeit. (R.T. 758) At one time he talked with McKee, and McKee said he could not tell it from real. It was a real bill. (R.T. 760-766) The witness was shown a statement, Exhibit 7; he said the affidavit was false except as to the residence. (R.T. 788) Friedland did not hear the conversation. (R.T. 807)

Cross-Examination: Questioning as to representation by Friedland in a pending federal charge, to show motive of

cooperating with Government. *Ramirez v. United States*, 294 F.2d 277, cited. (R.T. 860-889)

He knew Richards as a Government cooperator. (R.T. 896) George Mahler is also a Government cooperator; in May 1965 he had a conversation with him about counterfeit lira. (R.T. 898) Friedland said he could not split up the $10,000 because it was for a film deal. He assumed it was for counterfeit. (R.T. 916-917) [Questions as to whether he ever dealt in counterfeit money were objected to and the objection was sustained. (R.T. 919-920).] He did not know where to go to get counterfeit. (R.T. 921)

On basis of *Alfred v. United States*, 282 U.S. 687, the court stated it would allow questions on cross-examination as to offenses charged by the Government. (R.T. 952-953)

The witness testified that he had come to California in 1964 with Mahler in connection with the sale of stock in a company. (R.T. 986) On July 9, 1965, he had been arrested for assault on a federal officer and he had been shot. He did not know if he was at that time charged with another crime. He did not know if he was charged with the crime of illegal transportation of counterfeit securities. He was arrested for it. (R.T. 1002-1006) Federal officers spoke about bonds but not illegal transportation. There was conversation about counterfeit bonds. (R.T. 1008-1010) He was out on bail for mail fraud from buying tickets from Mahler. He did not know whether the charge was still pending. (R.T. 1022-1026) He had been convicted of two felonies--1947 and 1956. (R.T. 1026-1027) The word "counterfeit" was never mentioned in front of McKee. The first time he met Loraine--in Randall's apartment--there was no discussion about counterfeit money and also no mention the next time. Loraine never admitted

that he was involved in a counterfeit money operation. (R.T. 1058-1061) He never had dealings with counterfeit money. (R.T. 1113) There were three pending federal charges against him. (R.T. 1115)

Richard Randall testified that he was in the business of motion picture production and theatrical shows in New York; that he had met Loraine in December of 1964 or January of 1965. (R.T. 1138) They had discussed films and financing. While Loraine was in New York, the word "counterfeit" came up on two occasions, but not in that language. On the first occasion, he, Friedland, Mahler and Loraine were present. Mahler said he knew someone who could manufacture counterfeit. Loraine said there was a great need for counterfeit currency for collateral purposes–not to pass. (R.T. 1185-1186) He was in Cannes when Loraine told McKee that he was trying to get currency at a fraction of face value to stave off pending troubles for himself and Roe. (R.T. 1241) Friedland introduced him to Desatnick. He told Desatnick that he was not looking for counterfeit but Dennis was. (R.T. 1259) He called Loraine and told him 10,000 would be put up in escrow with Friedland to be released to Desatnick when Desatnick had something to deliver. (R.T. 1265-1266) Loraine said he would send $10,000 by cable. (R.T. 1270-1272) Loraine sent Sorenson and put $10,000 in an envelope marked "For Edward Friedland," and $2,000 in another envelope marked "For McKee and Union." Later, Loraine said he was sick and tired of looking for counterfeit for Roe, that he (Loraine) was going to inform Roe, "Forget about it," and Loraine said, "I want to forget about it. If you want to get it, do it on your own." (R.T. 1294-1295) Loraine said he had told McKee to go to

Friedland's office and get the money back and get the $10,000 back which was in escrow for Film Daily. Loraine asked him to see if he could get the money back. He called Friedland and asked him to return the money. He told Friedland that they could close the Film Daily deal themselves and there was no reason for Friedland to hold the money in escrow and that Dennis wanted it back. Friedland said he would. Sorenson came back that night with the money. (R.T. 1298-1300) Loraine had told him that Terry wanted to merge with Loraine's company and Terry had offered Loraine four motion pictures. (R.T. 1312) On one occasion, Loraine called him and asked him to calm Roe down, as Roe was in hysterics and threatening suicide. (R.T. 1333-1335) He talked with Roe and Roe said he was in a desperate position. Roe asked him to phone Loraine and see if Loraine could not return the $50,000 or a letter of credit at once. (R.T. 1340-1341) Some time later he had a conversation with Loraine about buying a bank charter. (R.T. 1376-1382) He had a conversation in Los Angeles with Loraine in which Loraine told him he thought he had solved the problem for Roe and himself. (R.T. 1390-1391) Loraine told him he was sending Terry to see Roe and for him to call Roe and tell him Terry was on the way, that he (Roe) was to pay Terry $5,000 in real money as a fee for bringing the money over. (R.T. 1391-1393) He called Roe and told him. He did not mention money to Roe. (R.T. 1394)

Cross-Examination: On several occasions, Loraine had told him he wanted nothing further to do with Roe or counterfeiting. (R.T. 1451-1454) He heard "500 plates" mentioned by Desatnick but never by Loraine. (R.T. 1459-1460) Desatnick never knew Loraine until after Loraine was arrested. (R.T. 1464) He never saw Terry get any counterfeit money from Florida.

(R.T. 1481) After Loraine got his money back from Friedland, on two occasions Loraine told him he wanted no part of any counterfeiting whatever, and that whatever Roe had to do, Roe had to do it on his own. (R.T. 1485-1488) Loraine never said he wanted to pass on counterfeit money. (R.T. 1527) Some of those he introduced Loraine to tried to "take" Loraine. (R.T. 1550) He sent Loraine something about a bank in Florida, and on his return Loraine mentioned that he had checked on it and passed it up. (R.T. 1554-1557) Roe told him on one occasion that "Dennis [Loraine] ignores everything I say or do. He is not interested." (R.T. 1592-1595) Loraine told Gray that if Gray wanted to make a deal with Roe, he would give Gray Roe's address and number and Gray could call Roe himself. (R.T. 1623-1624) He had pleaded guilty to the conspiracy count and the United States Attorney had agreed to dismiss the others. (R.T. 1642-1648) He was not in New York on June 1st and did not hear the conversation with Friedland that day as set forth in Overt Act No. 3. At that time he was either in Cannes or in Rome. (R.T. 1682-1684) He had a legal document obligating Friedland to hold $10,000 solely for the Film Daily. (R.T. 1689) Loraine never mentioned Desatnick's name until after his arrest. (R.T. 1726-1727)

Robert Terry testified he lived in New York City and was a motion picture film distributor. He had worked as a police officer for the Village of Old Brookville, Nassau County, New York. (R.T. 1752-1755) He had gone into the film distribution business under the name of Gibraltar Films. He had met Richard Randall. He had been in and out of the United States and Europe in connection with films. Randall told him that he had a backer and partner in Europe. He met Loraine in Los Angeles. (1756-

1761) He discussed joining companies with Loraine. Loraine told him his partner, Tom Roe, was in financial difficulty, looking for security with which to replace funds from clients' accounts. Lee (the attorney for Terry) said he was acquainted with a bank that might be interested. (R.T. 1774) Lee, Loraine and Terry met again and discussed the merger of Terry's company and Loraine's. Loraine told him if he would stay and look after things in Florida he would loan him some money. (R.T. 1788) He stayed, and Loraine went to Los Angeles. He talked with Loraine several times on the telephone about pictures, actors, writers, etc. (R.T. 1790) Loraine told him to forget about Roe's problem. At no time did Loraine instruct him to meet with or discuss with Lee the subject of whether or not the samples were available. (R.T. 1813-1814) He had made no arrangements to acquire counterfeit American dollars. (R.T. 1818) When he came to Los Angeles, he discussed "Blues For Mr. Charlie" with Loraine. (1818-1820) He met Lee at the airport and went to Mickey Hargitay's house, where Lee and Loraine met. Lee's brief case was open and he observed some money in it. (1825-1826) Loraine said he had discussed "Blues For Mr. Charlie" with Roe and that it was important to see Roe. (R.T. 1839) Loraine asked him if he would be able to leave at once and go see Roe in Switzerland. He said he could but lack of funds would prohibit him. He asked Loraine to advance him some money, that he would receive some money for pre-production. Loraine said he would advance him expenses. Loraine gave him a thousand dollars prior to his leaving the hotel. (R.T. 1840) Loraine gave him Roe's address and telephone number in Switzerland. Loraine asked him to take some papers to Roe. (R.T. 1841) Later, he met Lee, and Lee gave him three packages– the size of a large book. (R.T. 1844) [Two airline tickets were

marked Plaintiff's 21. (R.T. 1848-1849)] He went to Paris and then to Geneva and from Geneva to Lausanne. At Lausanne he called Roe. (R.T. 1856) He met Roe, talked over picture matters and "Blues For Mr. Charlie" (R.T. 1860-1861), pertinent facts concerning it, and Roe gave him a letter approving the project. [Plaintiff's 23 was a letter identifying the return flight. (R.T. 1862) Plaintiff's 24 was a copy of the letter Roe gave the witness.] Roe gave him $5,000, which was an advance on completing a screen play and the signing of a cast. When he returned to Roe's room, Roe was counting a lot of bills. He did not know where the money came from. (1863-1866) He stated [over objection] that he told Roe that Lee had said to give Roe the message that the paper was not of good quality. (1868-1869) After he returned to Los Angeles, he talked with Loraine. (R.T. 1893-1894) [Plaintiff's 25 was a receipt from Western Union for $2,000 sent to Loraine. Exhibit 26 was a statement the witness had purportedly signed in Friedland's office.]. In the statement he had said that he was associated with Gibraltar Films; that he was arrested on August 2, 1965, in Los Angeles, on a counterfeiting charge involving Roe; that the three packages he took to Switzerland Loraine told him were scripts for motion pictures which were to be considered by Roe for financing; that he had seen a great number of United States currency bills on Roe's desk; that he never saw Roe take the money from any packages or bundles; that he never discussed the bills with Roe; that he went through French customs in Paris and Geneva and the Swiss customs in Geneva; that he did not look into the packages at any time; that he had never seen Loraine in the possession of any counterfeit money; that he did not know what was in the three packages given to him for transmittal to Roe; that h[illegible]d no knowledge

that the money on Roe's desk was counterfeit. (R.T. 1900-1924)

Cross-Examination: When he first met Loraine it was in regard to pictures and the merger. (R.T. 1935) There was no discussion about obtaining counterfeit money. There was no mention when he talked with Loraine about Roe looking for counterfeit money. Loraine did tell him of Roe's problems. (R.T. 1947) The word "counterfeit" money was never used in his presence in any discussion with either Loraine or Roe. (R.T. 1949) At one time, Steve Deneen of the Bahamas was introduced to Loraine. Loraine was interested in buying Deneen's bank. (R.T. 1951) When they all talked about samples, he thought they were talking about American Express checks or British pounds or Italian lira. (R.T. 1954-1955) He gave Loraine a synopsis showing the cost breakdown as to cast and budget for "Blues For Mr. Charlie." (R.T. 1960-1961) He told Loraine he had some prior commitments with Sammy Davis, Jr., Sterling Hayden, Ava Gardner, Olivia de Havilland, and others. (R.T. 1961) Loraine said he would like to produce the picture. Lee never mentioned to him that Loraine was aware that Lee had brought hundred dollar bills in a suitcase. (R.T. 1971-1972) Based on his conversations with Lee and Loraine, he could not say that Loraine had any knowledge or anything to do with the three packages that he (Terry) had taken to Roe. (R.T. 2015)

Thomas Chambers Windsor Roe testified that he had some discussion with Loraine about financing a picture. They discussed something concerning counterfeit money, but the matter was not pursued in any way. The proposition with reference to counterfeit money never came from Loraine. (R.T.

2063-2072)

Cross-Examination: He had had extensive experience as a solicitor in reorganizing companies. (R.T. 2165-2167) His letter (Loraine Exhibit 9) refers to legitimate securities. (R.T. 2211-2214) The money previously given Loraine was not for counterfeit purposes. (R.T. 2241)

Evidence was presented of telephone records of calls from Randall to London and from Loraine to Terry at Lausanne.

Darwin David Horn testified he was a Secret Service agent and he had seen Loraine in the County Jail in Clark County, Nevada. Loraine said he knew nothing about the counterfeit notes taken to Switzerland by Terry, that he had shopped around while in the United States for counterfeit currency but had not found any and, if he had found any, he would not have done anything about it. Loraine said he did not know what Terry was doing and any inquiry he (Loraine) had made regarding counterfeit was done under the pressure of Thomas Roe who needed counterfeit money as a result of business failure which had occurred in Europe. (R.T. 2515-2552)

For The Defense:

Dennis Henry Loraine, on his own behalf, testified as to his background and family, his business dealings with Roe, the forming of a film company in Italy with George Sanders, his meeting with Randall (introduced as the head of Union Film Distributing, the oldest independent film distributing company in America), and Randall's reference to Friedland as his attorney

in New York. (R.T. 2633-2675) Loraine testified that McKee had been group accountant for Cadco in Scotland–Roe had given McKee the job. In June, McKee went to America at his request. McKee had been unemployed, so he had him go to New York to check on Union Film Company's bank accounts. He told McKee in the presence of Randall that Roe had given them a good credit rating but Randall had told him that they owed some hundred thousand dollars. (R.T. 2679-2681) Roe told him that he would have a way of getting money and working capital for Cadco-Italiano. Roe did not expect Cadco to collapse and that is why he authorized 80,000 pounds from Cadco Building to Cadco-Italiano. He told Roe that he had been accused of stealing it, and Roe said that when the investigation was revealed they would know he was the financial head and money could not be taken from the bank without his consent. He and Roe had an altercation, and Roe suggested he resign. (R.T. 2781-2783) Roe referred to "discount dollars." (R.T. 2785-2786) In April of 1965, he met Richards in Friedland's office in New York–Randall introduced them. He never knew or heard of Desatnick or Terry before he came to the United States. (R.T. 2688-2689) He saw Richards and Randall between April and June. Randall said he was anxious for Richards to meet Roe, since Richards had been flown specifically to Rome to bring samples of counterfeit to Roe, and if he (Loraine) did not accept the counterfeit it would be a "hell of a waste of money." He did not accept it. (R.T. 2692-2694) Roe told him Dick Randall was the man to solve their problems. Roe said Randall was arranging a consignment of something and when Roe had that consignment, Roe would advise him of it. (R.T. 2695) He did not participate in any activity with counterfeit during his trip

to the United States in April. He never at any time had any counterfeit money in his hands or possession or in his sight or near him except in court and in Schulman's office. He never saw the money or any part prior to seeing it in court except in Schulman's office. He never sent Terry to Roe with any counterfeit. (R.T. 2695-2696) At the conversation in Rome between Randall, Richards and himself, Richards said for him not to be nervous as he would not be pushing any counterfeit around. He told Richards that he was surprised that Richards should suddenly mention counterfeit to him. Randall said, "You know what Tom's doing, don't you?" and he said, "I don't want you to introduce me to people with counterfeit or even talk about counterfeit." (R.T. 2696-2697) Roe had previously suggested counterfeit, such as the document he doodled up in April or May of 1965. (R.T. 2697) After Randall's departure to America after the first meeting, Roe said Randall had introduced him to a maharaja of India who had said he would give him several lacs of rupees for counterfeit dollars. Roe said certain banks in India were not above putting counterfeit dollars in their safes, and he felt he could, with clients' accounts–through various means of control, move rupees and amass a small fortune from this. (R.T. 2698-2699) He then had a conversation with Richards and Randall in Rome and told Richards he would be advised to leave Rome. Randall remonstrated with him, called him a fool, and said Uncle Tom (Roe) would be very angry. Randall paid Richards' bill and sent him back to America. The date was in May 1965. He did not see Richards again. (R.T. 2699-2700) He saw Randall the same evening or the following day, and Randall said Uncle Tom had expressed anger because Richards returned to America and would have to pay for "another damned

ticket" to bring him back again. (R.T. 2700) About June 7th Roe told him in Geneva that he had sent a ticket to Richards to return to Rome. Roe told him it was simple to get counterfeit bonds in a banking account, "All one does is to get bearer bonds and every time interest is renewable, you pay interest from a bank account in New York and this allays suspicion. This way you can put millions of bonds in Switzerland." (R.T. 2701-2704) Roe told him Randall had a great number of contacts and it was a pity about the bonds and that it would be discovered that he had $50,000 in bonds. He asked Roe why he did it, and Roe said, "To keep you in line." (R.T. 2704) Roe said, "Remember this man Rose you met in the Hotel Napoleon with Randall? He has got them. At any time, Dennis, you don't do exactly what I want you to do, it's going to be a very simple matter for me to say you gave me these bonds." (R.T. 2706) He never told McKee on his trip to New York and Los Angeles in July to check some counterfeit money. (R.T. 2712)

The first count, charging him with conspiracy with others to violate sections 472 and 473 of Title 18 in reference to counterfeiting, is not true. At no time did he have any intent to conspire to violate these sections. (R.T. 2759-2760) He never had the intent, as charged in Count II, to defraud, keep in his possession, conceal, falsely make and counterfeit obligations of the United States. (R.T. 2762) He never had any intent to do, nor did he do, any of the acts charged in Count III. He never had anything to do with the counterfeit money that the Government had charged him with in the indictment. (R.T. 2762-2763) He was introduced to Chester Gray in America by Randall, who explained that Gray was a partner of his and that they had purchased a picture together. Gray sold him his

half of the picture "Toto and Cleopatra." In Randall's presence, Gray said Randall ought to get him off the hook; he had left some money with Randall to support his (Gray's) wife while he was in prison, but Randall, after the first month or two, neglected to do so. (R.T. 2765-2769) He (Loraine) never had a conversation with Max Desatnick having to do with counterfeit money. He met Desatnick at Randall's apartment after his arrest. Desatnick said he had problems and so much trouble that if he could make a deal downtown he was going to do so. (R.T. 2274-2276) Desatnick told him a man by the name of Richards was busy in Canada looking for counterfeit, calling himself "Loraine," and that Richards was an informer. (R.T. 2776-2777) Randall introduced Mahler, stating Mahler could get anything he wanted, a bank in the Bahamas, a travel ticket, or the printing of counterfeit bonds; that Richards was the best counterfeit man in the business. He never had anything to do with Mahler. (R.T. 2777-2778) Roe participated with him in filming and making pictures in Italy and asked for advances. (R.T. 2778) Exhibit 17 consisted of shipping documents for the delivery in America of four films that had been completed [Roe testified that they never had been completed]. He told McKee that Randall might be able to find Roe counterfeit money. McKee said he did not want to get mixed up in it and suggested that he (Loraine) go to the police, but said Uncle Tom had not done anything as yet but to watch out for him. (R.T. 2792-2794) He advanced $15,000 to Randall for shares of stock but never got the stock. (R.T. 2799-2802) He had a conversation with Gray in the presence of Randall on April 23 or 24; Gray asked him if he desired to obtain counterfeit and he said they were not interested. Gray said, "Uncle Tom is interested," and he

told Gray that Uncle Tom got wild ideas, talked about counterfeit, was on the edge of a nervous breakdown, and that Gray should forget it, that it was not worth looking for. (R.T. 2811-2812) Then Gray said if he was sincere about not wanting counterfeit the best thing to do was hire him, as he worked for the Secret Service; that if he were not looking for counterfeit, Gray would practically live with him, and so he hired Gray. (R.T. 2812-2813) He felt that if Gray were in the picture it would discourage any attempt to deport the counterfeit to Roe. (R.T. 2813-2814) Randall told him on several occasions that he was going to testify against him no matter what happened, because he had accused Randall of stealing certain films. (R.T. 2876-2878) After July 2nd he went to Florida. Terry also wanted to show him some films that he might be interested in buying. (R.T. 2885-2886) He never had any conversation with McKee about having McKee go to the office of Friedland to examine counterfeit money, nor did he telephone McKee to do so. (R.T. 2893) About July 2nd he had a cable from Roe as a result of a telephone call when Roe hysterically told him that he was blocking Roe's attempts to get counterfeit, that $20,000 had been sent to McKee to get counterfeit. (R.T. 2893-2894) McKee told him he had received $5,000 and had given it to a man but could not remember him. (R.T. 2896) He never made any threats but did discuss McKee's taking the Fifth Amendment before the grand jury. (R.T. 2897) About that time he had a conversation with Desatnick when others were present when the grand jury proceedings were discussed and the counterfeit and plates were mentioned by Randall and Desatnick. He never at any time told Randall he was looking for counterfeit to be used as collateral for Roe. (R.T. 2901-2905) After his return from

Florida, RAndall introduced him to all sorts of people who, according to Randall, could supply counterfeit to Roe. Nearly everyone involved in the matter was introduced to him by Randall who said or claimed that they could find counterfeit for Roe. On each occasion he told Randall to forget it. (R.T. 2905) He never asked Randall or Richards to get counterfeit for him or told Mahler he wanted to make up a deficit through counterfeit money. He never bought a ticket for Richards to go to Europe to discuss handling of counterfeit or told Randall he had given money to Richards to get samples of counterfeit, nor did he talk to Randall about dealing with Desatnick to get counterfeit money for a $10,000 escrow. He never intended to get hold of it or use it in any way on his own. He never got airplane tickets for anyone to act as agent to pick up counterfeit or take it to anyone. (R.T. 2906-2907) Randall said he was going to send Roe a fake cable about the $50,000 so he could raise some money. (R.T. 2907-2908) He never dealt with anyone with the intent of getting counterfeit money. (R.T. 2909) After his arrest Randall advised him that Roe asked him to send the letter of credit so he could borrow $120,000 quickly, as Roe had a delivery of an anticipated half a million dollars and wanted to be able to pay for it, and that Roe said if he did not pay for it on arrival, the one delivering it was going to blow his head off. Randall told him it was the same people who had threatened to liquidate him if he blocked the deal with Roe. (R.T. 2909-2910) He never had a conversation with anyone in reference to having found an attorney in Florida who could provide counterfeit money and use Terry as a courier to take it to Roe in Europe. (R.T. 2910) Randall introduced him to Free about July 12th as a man with good connections and a personal friend of

President Johnson. Randall said he would put Free in touch with Roe regarding some steam gimmick, and later Randall told him Roe was excited over the prospect. Later, Roe telephoned him and said he had found a wonderful thing and that they were going to be millionaires. At Roe's request he loaned Roe $14,000 for an option from Free, but after he gave it to Roe, Roe said he could not use it but had to put it with some lawyer, mentioning Mr. Belli's name. (R.T. 2910-2913) Roe said he was flying to Los Angeles to meet him. He wanted to get rid of Randall and he told him there was nothing counterfeit in this and that he did not want to have him have any further contact with Roe. He went to the airport to meet Roe, and Free suddenly appeared and thanked Roe for the $14,000. (R.T. 2914-2915) Roe suddenly decided to return the next day, and the next day they went to the airport with Sorenson and Free appeared and said he had not been able to get papers signed and asked Roe to defer his return. The following morning Roe said he did not want them to go to the airport with him, as he and Sorenson were a couple of spies. Roe was acting very irrationally. Free took Roe to the airport. Roe called him from the airport and said, "You think you're clever but you're not. If you interfere again I have a message for you. You are going to be liquidated." Then Roe hung up. Two days later Roe called him and said, "They're going to kill me," and then there was one of those hysterical conversations. This was on July 26th. He had phoned Roe at Roe's cable request sent from Lausanne. (R.T. 2915-2917) He had no discussion with Attorney Lee with reference to counterfeit in Florida. His conversations with Lee were with reference to film production with Terry. Lee said he might get some "blocked currency" for Roe. His understand-

ing was that blocked currency is kept by a country within its own territory and it has not got the movement internationally of a free currency. It can sometimes be bought at less than regular rate. (R.T. 2917-2919) He never called Roe to tell him Terry was on his way. Ne never counted any counterfeit money in Hargitay's house. (R.T. 2919-2920) He had a conversation with Agent Horn of the Secret Service at the time of his arrest. He told Horn he was aware of activities concerned with people looking for counterfeit but that he most certainly would not have used it or passed it to anyone and that he had no knowledge of Terry taking any counterfeit to Roe. (R.T. 2921) He never told Randall to buy a ticket for Richards to go to Europe to discuss counterfeit or that he gave money to Richards to get samples of counterfeit. Randall never told him he had talked to somebody who could supply him with counterfeit and would have to have $10,000 to place in escrow and make it appear as a legitimate escrow. He never told Randall that he had talked with McKee and McKee was going to look at the counterfeit notes in Friedland's office. He told Randall to buy a ticket for Sorenson to take two envelopes, one with 10,000 and one with 2,000, but those were to close an escrow for Film Daily. (R.T. 2925-2926) He never told Randall that he had solved their problems or that Terry introduced him to an attorney in Florida who had made arrangements to print counterfeit and use Terry as a courier to Roe in Switzerland. He did not tell Randall to call Roe and tell him Terry was coming with counterfeit money. He never told Randall after his arrest that he had nine and a half million dollars in counterfeit. (R.T. 2926-2927) He had a conversation with Gray about fifteen minutes before his arrest. Roe called him early on July 28th, was distraught and nearly hysterical, and told him that he had been around passing

counterfeit and the last bank had punched holes in it and he was going to be arrested that night. Roe reminded him of all the times he had thwarted him to get the counterfeit and said that then when he got the stuff it was "no damned good." (R.T. 2927-2930) At the Hargitay house, when Lee and Terry were there, Lee brought a suitcase from his car. He had a conversation with Lee for a while about "Blues For Mr. Charlie." Hargitay asked Lee if he could borrow the car. After they came in, "Blues For Mr. Charlie" was discussed.

Cross-Examination: He never heard Randall or anyone else talking about counterfeit money in Friendland's presence, and there was no talk with Friedland about counterfeit money. (R.T. 2938)

He did not tell Terry to take counterfeit money to Roe or tell Roe that Terry was coming with that purpose, nor tell Randall to tell Roe that Terry was coming with that purpose. He did not know that Terry was going to Switzerland with counterfeit money. (R.T. 2954-2955) Roe told him of his (Roe's) dealing in counterfeit securities. Roe was interested in dealing with counterfeit and was negotiating with Randall. (R.T. 2961-2962) Gray told him he had run a successful counterfeit operation in Cuba and had been examined by the Secret Service. (R.T. 2963) He never told Roe, Randall, Richards, Mahler, Friedland or Gray that he was looking for counterfeit money. (R.T. 2964)

Charles A. Alecoat (on behalf of Friedland) testified that he had had conversations with Loraine and Randall about the acquisition of Film Daily. When $10,000 was put in escrow, he told somebody that $10,000 was not enough. (R.T. 3031-3043) He saw Loraine twice. They discussed the purchase of

Film Daily and advertising of Loraine's pictures. (R.T. 3055-3056)

Robert James Terry was recalled and testified that Lee never told him in the presence of Loraine that he had received money for the purchase of counterfeit from Loraine. (R.T. 3086) Lee never told him that Loraine was aware that the package he took to Roe was counterfeit. (R.T. 3086-3087) Randall had told him in the presence of Loraine that he wanted Loraine to go to jail even if he, Randall, had to go. (R.T. 3092)

On being questioned by the court, Terry stated that he had no factual knowledge that any of the things he took to Europe to deliver to Roe were counterfeit notes, securities or bills. He was not certain until after he saw the money on Roe's desk. At the time of his departure to Europe, he did not feel he was taking counterfeit money. (R.T. 3101-3102) He did not believe Loraine or Friedland were having anything to do with counterfeit currency. (R.T. 3102-3103)

Frank Young Grafer testified he had known Desatnick for 32 years. He saw Desatnick in August, 1965, in Los Angeles. He referred Desatnick to Mr. Brody. At that time Desatnick told him that ". . . Dennis Loraine . . . is getting in the middle of something he doesn't know . . . nothing about . . . " (R.T. 3131)

Peter Van Der Hurk was called by Loraine and testified that he was a medical laboratory scientist in ESP–extra sensory perception–including work for the U. S. Attorney's office in Washington, government work. (R.T. 3134-3141) He had had

a conversation with Randall and Loraine about the middle of August of 1965 about a picture. Loraine said he was interested in making a picture but was in trouble with counterfeit money. At this time Randall said, "He is not. He had nothing to do with counterfeit money. He'll get off the hook any way. . . . Dennis had nothing to do with counterfeit money." Randall said he was asking Loraine for $50,000 and that he would clear him. Randall said, among other things, "I have Dennis [Loraine] in the palm of my hands." (R.T. 3145)

Stephany Farb testified that in August of 1965 he was present at a conversation with Randall at Hargitay's apartment at which Loraine was present. Randall was asking Loraine for money for films. Loraine kept saying, "no more money," and Randall kept saying, " . . . well, if you don't do it then I am going to start lying . . . I'm not going to be indicted and so I can be a witness for you." Randall said he could clear Loraine. (R.T. 3156-3159) Randall said he had sent Tom Roe bonds and money. (R.T. 3158) Randall said if he did not get money he would change his testimony and hurt Loraine, otherwise he would be a witness for Loraine. (R.T. 3161-3162)

Edward L. Friedland testified that he did not do any of the overt acts charged. (R.T. 3166-3171) Randall had told him that Loraine was a big film producer, had lots of money and interests; that Loraine was interested in Randall's company. (R.T. 3179-3186) He had talked with Loraine and discussed motion pictures, and Loraine paid him a retainer. (R.T. 3199-3701) They also discussed currency which could be bought at a discount. (R.T. 3204-3205) There was never any conver-

sation about counterfeit money in his presence. (R.T. 3217) Desatnick told him that there was an investigation going on in another federal matter; that he was afraid; that he had no defense; and that he could expect no leniency and was anxious to make a deal where, by testifying for the Government, he could get some leniency for himself. (R.T. 3276)

Cross-Examination: He never discussed with Loraine Randall's idea of a counterfeit plant in Italy with regard to the picture "Operation Goldfish." He never discussed counterfeit with McKee or told McKee he had talked with Loraine about looking for counterfeit. (R.T. 3278-3279) Randall had never told him that Loraine or Roe were looking for counterfeit lira. (R.T. 3308-3309)

For The Government:

L. E. Boggs testified for the Government that he was Assistant Special Agent of the United States Secret Service. After Loraine's arrest, Loraine made a statement, after being advised of his constitutional rights—Loraine denied he gave Terry counterfeit money to take to Switzerland, that if he had found any counterfeit money, he was not going to do anything with it.

ARGUMENT

I

The Court Erred In Holding That The Evidence Was Sufficient To Support The Verdict Of Guilty Pertaining To Count One (Conspiracy) And Count Three (Transfer and Delivery)

The Circuit Court did not consider the evidence with respect to count two, since the sentence on count two was concurrent with count three. However, the evidence was, in our opinion, insufficient to support the verdict of any count. While the evidence shows that certain discussions took place with respect to counterfeit money, there is no evidence that Loraine had anything to do with the production, use, transfer and delivery thereof to Roe, an indicted co-conspirator. The competent testimony of alleged co-conspirators was insufficient, conflicting and largely discredited; some of the defendants testifying for the Government, in fact, exonerated Loraine from any complicity with the actual production and delivery of the counterfeit money to Roe in Switzerland.

McKee, a Government witness but not a conspirator, advised Loraine not to take counterfeit bills and never saw Loraine have any counterfeit bills in his possession or presence.

Defendant Randall, an alleged co-conspirator, was bitter toward Loraine and had animosity and bias against Loraine. And, according to witness Stephany Farb, Randall made threats against Loraine, stating that he was going to start lying about Loraine if Loraine did not give him more money; that he could clear Loraine but if he did not get more money

he would change his testimony to hurt Loraine. Randall and Loraine were negotiating for the production of motion pictures, and Randall stated to Peter Van Der Hurk, who was a medical laboratory scientist in ESP–extra sensory perception–and did work for the Government, that "Dennis had nothing to do with counterfeit money." At the trial, however, Randall's testimony against Loraine was very damaging, indicating that Randall was carrying out his threats to lie about Loraine.

Robert James Terry, an indicted co-conspirator testifying for the Government, exonerated Loraine to a large extent. Terry and Loraine discussed films, but Loraine told him Roe was in financial difficulty. Among other films Terry and Loraine discussed "Blues For Mr. Charlie," and that it was important to see Roe. Terry said he could go see Roe if the funds were available for the trip. Loraine agreed to advance the money, which would be paid out of a pre-production advance on the picture. Before Terry left, he saw *Lee* and *Lee*–not Loraine–gave him three packages which he delivered to Roe. Roe discussed with him the picture "Blues For Mr. Charlie," including budget details, the cast, and other pertinent facts. Terry left Roe's office for a few moments; when he returned, he saw Roe standing behind the desk examining a large pile of bills. Terry did not know if they came from the packages Lee had given him or not. From the time Terry first met Loraine until he went to Switzerland to see Roe, he never discussed counterfeit money with Loraine. When Lee gave him the packages for Roe, Lee *never said they were on behalf of Loraine.* When Lee went to his car at the home of Mickey Hargitay to get his suitcase, Loraine was not in the room, and Lee never mentioned that Loraine was aware that Lee had brought hundred dollar bills in the suitcase.

The principal actors in the entire counterfeit transaction were Roe and Lee, and Lee never testified. Roe, on the other hand, showing great bias and animosity toward Loraine, gave the most damaging testimony against Loraine. However, as an alleged co-conspirator and accomplice, Roe's testimony should have been more carefully scrutinized and treated with more caution by the jury, even if not requiring such testimony to be corroborated.

Even Max Desatnick, another Government witness–with an unsavory record of felonies, including counterfeiting, and with three federal charges pending against him–testified that there never was a discussion in Loraine's presence of counterfeit money and Loraine never admitted he was involved in a counterfeit operation or had dealings with counterfeit money.

There was not the slightest evidence that Loraine ever had possession of counterfeit money or that he had anything to do with the delivery of counterfeit money to Roe, or that he knew about the acquisition by Terry from Lee of the counterfeit bills and their delivery to Roe. At most, all that can be said is that on occasions, at the request or insistence of Roe, Loraine made inquiries about counterfeit money, but if at any time he even in fact joined a conspiracy to procure and deliver the counterfeit to Roe–and we contend he did not–he withdrew from the conspiracy before the counterfeit was acquired and delivered. Randall testified that prior to the above occasion, Loraine said he was sick and tired of looking for counterfeit money for Roe, that he was going to tell Roe to forget about it, and that if Randall wanted to get it, Randall was to do it on his own (R.T. 1294-1295).

Loraine himself testified that Roe pressed him to obtain counterfeit money and that he, Loraine, told Randall not to

introduce him to people with counterfeit or talk about counterfeit. Loraine also denied ever procuring or attempting to procure counterfeit for Roe and categorically denied anything to do with the procurement and delivery of counterfeit to Roe and denied the charges against him.

The trial was a protracted one, and much evidence was permitted to be introduced against Loraine on the charge of conspiracy that was hearsay, incompetent and irrelevant unless definite proof of conspiracy was established, and we submit that the proof of the existence of a conspiracy was insufficient to justify the admission into evidence of hearsay statements of some of the alleged conspirators. As was said in *Krulevitch v. United States,* 336 U.S. 440:

> "When the trial starts the accused feels the full impact of the conspiracy strategy. In other words, the conspiracy often is proved by evidence that is admissible only upon the assumption that conspiracy existed. The naive assumption that prejudicial effects can be overcome by instructions to the jury, all practicing lawyers know to be unmitigated fiction."

The gist of the offense of "conspiracy" is agreement among the conspirators to commit an act of one or more of the conspirators to effect the object of the conspiracy. *Oliver v. United States,* 121 F.2d 245. Proof of conspiracy requires more than participation in the substantive offense; namely, unlawful agreement and participation with knowledge thereof. *Dickerson v. United States,* 18 F.2d 887; 15A C.J.S. 732; *Ingram v. United States,* 360 U.S. 672, 677; *Pereira v. United States,* 347 U.S. 1.

In view of the lack of evidence to support the verdict

and in view of testimony by those who admittedly were biased and antagonistic to Loraine, even threatening to lie about him, we submit Loraine was denied a fair trial.

II

Petitioner Was Denied A Fair Trial And Due Process By The Suppression Of Evidence And Failure Of The Prosecution To Disclose Evidence Favorable To Petitioner's Defense.

The trial court should have dismissed the indictment because the prosecutor failed to call to the attention of the grand jury the records and character of Randall and Desatnick, which the Government had in its possession. The suppression of evidence by the prosecution at the trial which is favorable to an accused violates due process, where the evidence is material either as to guilt or punishment, irrespective of the good or bad faith of the prosecution. The Ninth Circuit so stated the law, citing *Brady v. Maryland*, 373 U.S. 83. In *Giles v. Maryland*, 386 U.S. 66, Mr. Justice Fortas, in his concurring opinion, stated at page 98:

> "I do not agree that the State may be excused from its duty to disclose material facts known to it prior to trial solely because of a conclusion that they would not be admissible at trial. The State's obligation is not to convict, but to see that, so far as possible, truth emerges. This is also the ultimate statement of its responsibility to provide a fair trial under the Due Process Clause of the Fourteenth Amendment. No respectable interest of the State is served by its concealment of information which

is material, generously conceived, to the case, including all possible defenses."

The Circuit Court, however, erred in holding that the prosecution need not disclose to the grand jury evidence favorable to the accused, and it is with this we take issue. The grand jury should be given all the material facts necessary for it to arrive at an impartial determination as to the issuance of the indictment. Otherwise, the suppressed evidence might in many instances be of a character as to preclude the issuance of the indictment. Especially is this true of an indictment for conspiracy, because of the problems and difficulties due to a conspiracy charge that face the defendant at the trial, as we have pointed out *supra* in the quotation from *Krulevich v. United States.*

The prosecution in the instant case clearly failed in its duty, under the rules of the cases cited above, to disclose facts material to the defense.

III

Petitioner Was Denied A Fair Trial And Due Process By The Introduction Of Evidence By The Prosecution Calculated To Degrade Petitioner And Hold Him Up To Obliquity

To augment our argument that Loraine was denied a fair trial, permit us to call attention to the following incident: Over objection a conversation was related by the witness Randall to and with Mr. Roe (commencing at R.T. 1330) in the course of which there was a discussion about a large sum of money having been given to Mr. Loraine and that a great problem had arisen as a result of which Mr. Roe was

thinking of taking his life. (R.T. 1337) Reference was made to Loraine and a non-existent bank. (R.T. 1339) The witness said he had talked with Loraine and said, "*I think you are a blackguard*" (emphasis ours) (R.T. 1342) Motion to strike was made. (R.T. 1342, 1352)

As was said in *Michelson v. United States,* 335 U.S. 469, 474:

> "Courts that follow the commonlaw tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, *Greer v. United States,* 254 U.S. 559, 62 L.Ed. 469, 38 S.Ct. 209, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice."

See also 1 Wigmore, Evidence, 3d Ed. (1940) 57.

To the same effect is *Benton v. United States,* 233 F.2d 491. In the *Benton* case, a Government witness was permitted to say that the defendant had the reputation of being part of a syndicate engaged in the operation of a large distillery, and to have been occupied in driving race cars and in the whiskey business. All of this testimony as to reputation and prior criminal conduct was taken over the objection of the defendant. The court in *Benton,* at page 492, said:

> "We are of the opinion that it was error under the circumstances to admit evidence of the defendant's reputation for violating the liquor laws and to admit the evidence of a conviction which had taken place eight years before the offense which was being tried. The familiar rules with respect to these matters were set out in *Michelson v. United States,* 335 U.S. 469, 475 . . . ."

The testimony of a non-existent bank and that Loraine was a "blackguard" certainly was prejudicial to him, as the jury might well have gained the impression that Loraine was engaged in nefarious activities unconnected with the charges, and that, therefore, it was likely he was guilty of the charges in the instant case.

The prejudicial evidence erroneously admitted could not be cured by instructions. The court in *Sunderland v. United States,* 19 F.2d 202, 216, stated:

> "Whether cautionary instructions to the jury to disregard prejudicial evidence erroneously admitted will cure the error depends, of course, upon the nature of it and the circumstances in each instance. When it cannot with reasonable certainty

be shown that the harm has been undone, a reversal is required. See *Kotteakos v. United States*, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557. We think so much harm was done that it isn't reasonable to conclude that it was eradicated in the ways attempted, for that seems to be asking of the laymen composing the jury something which was well nigh impossible."

Cf. Delaney v. United States (1 Cir.) 199 F.2d 107; *United States v. Sansone*, 206 F.2d 86.

We submit that the above evidence adduced by the prosecution denied petitioner a fair trial.

IV

The Petitioner Was Denied A Fair Trial And Due Process By The Unfair, Inaccurate And Untruthful Publicity Incident To The Trial

Introduced in evidence as Exhibit GG was a group of newspaper clippings showing the unfair and untruthful publicity of the trial. A motion was made to dismiss the case because of the same, but the motion was denied. (R.T. 2591) In the interest of brevity, we respectfully direct the Court's attention to this exhibit in order that the Court may examine the clippings and determine their impingement on the trial of petitioner.

In *Sheppard v. Maxwell*, 384 U.S. 333, and in *Estes v. Texas*, 381 U.S. 532, this Court reversed the convictions on the ground of the unfavorable publicity. In *Sheppard*, this Court stated, at page 16:

"But the court has also pointed out that '[l]egal

> trials are not like elections, to be won through the use of the meeting hall, the radio and the newspapers.' *Bridges v. California*, 314 U.S. 252, 265 (1941). And the court has insisted that no one be punished for a crime without a 'charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyranical power.' *Chambers v. Florida*, 309 U.S. 227, 236-237 (1940)."

The Circuit Court in the instant case stated that Loraine had failed to show how he had been prejudiced by the publicity. However, this Court in *Estes* held that the conviction should be set aside despite the absence of any showing of prejudice. In the case of *In re Murchison*, 349 U.S. 133, at 136, Mr. Justice Black stated:

> ". . . our system of law has always endeavored to prevent even the possibility of unfairness."

We respectfully contend that the Circuit Court erred in holding that it was necessary to show that the defendant was prejudiced by the publicity. Such a holding is in direct conflict with the *Sheppard* and *Estes* cases decided by this Court, and warrants a reversal of the judgment.

CONCLUSION

For the reasons stated, we respectfully ask that the petition for certiorari be granted.

Respectfully submitted,

RUSSELL E. PARSONS

Attorney for Petitioner,
Dennis Henry Loraine

APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DENNIS HENRY LORAINE, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	No. 21,079

[June 4, 1968]

Appeal from the United States District Court for the Central District of California

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Before: HAMLEY and ELY, Circuit Judges, and CRARY,* District Judge

HAMLEY, Circuit Judge:

Dennis Henry Loraine was charged, in three counts, with offenses involving counterfeit government obligations. The first count charged a conspiracy in which Loraine, Edward S. Friedland, Richard Randall, Robert James Terry and Thomas Chambers Windsor Roe were named as co-conspirators.[1] The second

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*The Honorable E. Avery Crary, United States District Judge for the Central District of California.

[1]In this count the five were charged with having agreed, confederated and conspired with each other and with other unnamed individuals, during a period extending from prior to April 25, 1965 to August 5, 1965, to: (1) pass, utter, publish, sell, possess and conceal counterfeit obligations of the United States with intent to defraud, in violation of 18 U.S.C. §§ 371 and 472 (1964), and (2) buy, sell, exchange, transfer, receive and deliver such counterfeit obligations, with intent that the same be passed, published and used as true and genuine, in violation of 18 U.S.C. §§ 371 and 473 (1964). Thirty overt acts were alleged.

and third counts charged substantive offenses, Loraine and Terry being named in count two, and Loraine alone in count three.[2]

Following a jury trial, Loraine was convicted on all three counts. After the imposition of sentence, he took this appeal. He argues here that the evidence is insufficient to support the verdict of guilty on any of the counts and that the trial court therefore erred in denying his motion for judgment of acquittal.

Viewed in a light most favorable to the Government, the evidence reveals the following circumstances and events: Beginning in late April 1965, Loraine and the alleged co-conspirators participated in a series of meetings, carried on extensive correspondence and telephone communications, and engaged in foreign and domestic travel in an effort to obtain and use counterfeit money in large amounts. The prime purpose of this undertaking was to overcome serious personal financial difficulties being experienced by Loraine and Roe.

The initial efforts in this direction, pursued during late April, all of May and most of June, 1965, proved abortive. However, after Randall introduced Loraine to Terry in Los Angeles on June 27, 1965, they began to achieve positive results. About July 5, 1965, Loraine, Terry and Joel Lee, Terry's attorney, had dinner together in Florida. During the dinner Loraine stated that Roe was in temporary financial difficulty and needed about one million dollars.

At a subsequent meeting, Lee told Loraine that he had a source that could supply Roe's needs. Loraine expressed interest and Lee said that he would attempt to obtain samples of what could be supplied. Later that week Loraine telephoned Terry and requested him to call Lee and ask if Lee had "done anything" with regard to Roe's problem. Loraine further instructed Terry

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[2] In the second count, Loraine and Terry were charged with having kept in their possession and concealed, with intent to defraud, falsely made and counterfeited obligations of the United States, namely 3762 counterfeit one hundred dollar federal reserve notes in the total face amount of $376,200, in violation of section 472. In the third count, Loraine was charged with having transferred and delivered the same false and counterfeited obligations to Terry, with the intent that the same be passed, published and used as true and genuine, in violation of section 473.

to tell Lee "if he had not been able to locate or come up with any samples . . . to forget about it." Terry reported back to Loraine that Lee hadn't been able to obtain anything.

About July 18, 1965, Loraine received a telephone call from Terry in Florida. Terry said that $500,000 in counterfeit money in one hundred dollar denominations of United States currency could be made available upon short notice, and up to $5,000,000 could ultimately be made available. Loraine was advised that Joel Lee was Terry's contact for the counterfeit money.

On July 25, 1965, Roe, then in Europe, telephoned Randall in Los Angeles and said he had to speak to Loraine urgently. Randall gave this message to Loraine who told Randall that he had finally found what he was looking for. Loraine told Randall that he had found counterfeit American money through Terry. Loraine stated to Randall that Terry's contact, Joel Lee, had made arrangements to print counterfeit one hundred dollar bills and that in the previous ten days or two weeks the money had been printed.

About July 26, 1965, Loraine asked Terry to pick up Lee at the Los Angeles airport. Terry did so and the two proceeded to Mickey Hargitay's house in Los Angeles, where Loraine was staying. After Lee and Loraine had met in a bedroom at the Hargitay house, Lee went to the automobile to get his briefcase, and then returned to the bedroom. Loraine was not then in the bedroom, but Terry entered the room. Terry observed quite a few one hundred dollar bills in United States currency neatly stacked in Lee's open briefcase.

Later in the day Terry and Lee met Loraine at a coffee shop and Loraine there told Terry that Roe, then in Switzerland, was interested in seeing Terry regarding the film "Blues for Mr. Charley."[3] Loraine also asked Terry if he could leave the next day for Switzerland. After working out financial details, Loraine told Terry to telephone Roe in Switzerland and inform him that Terry was to go over there. In addition to discussing film matters, Loraine told Terry that he could do him a great favor by taking with him some papers that Loraine had to get to Roe.

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[3]Loraine, Randall, Roe and Terry were all interested in various phases of the motion picture business.

Lee and Terry then went to Terry's motel room and while Terry was packing Lee handed him three packages tightly wrapped in newspaper. Each package was light in weight and the size of a large book. Terry put the three packages in his overnight bag and left that evening by plane for Geneva, via Paris.

On the same day, July 26, 1965, Loraine told Randall that about $500,000 in counterfeit one hundred dollar bills was on the way to Roe in Switzerland with Terry as courier. Loraine also told Randall that he only paid for those bills that looked good since some of them had not come out too well. Loraine asked Randall to telephone Roe and tell him there would be no charge for the poor quality counterfeit bills which had been included in the packages. Loraine also told Randall to tell Roe that he should pay Terry $5,000 in genuine bills as a fee for taking the counterfeit money to Roe. Roe was also to send Loraine $55,000 after Roe cashed the counterfeit money. This latter sum was to cover the balance due to the suppliers of the counterfeit money.

Randall telephoned Roe and relayed this information to him, advising that Terry would reach Switzerland the next day. Randall also told Roe that Loraine had found that $200,000 of the counterfeit money was defective but that Roe would receive $300,000 in well-printed counterfeit bills. Randall explained to Roe that Terry was also delivering to Roe $75,000 of the poor-quality counterfeit bills in case Roe could do anything with it.

Terry entered Roe's office in Lausanne, Switzerland on the morning of July 28, 1965. They first discussed film matters. Terry then told Roe that he was instructed to give him the contents of the briefcase which Terry had with him at the time. Terry put the three packages on the table and then stepped out of the room to give Roe's secretary his plane ticket.

Shortly afterwards, Terry reentered Roe's office. At that time, Roe was standing behind his desk examining a large pile of one hundred dollar bills. Terry told Roe that the counterfeiting was done in a great hurry at Loraine's request and the ink was not dry before the packages were put together. Terry also stated that the paper was not the best quality and that in some of the bills the numbers were blurred.

Terry told Roe that it was Lee's advice not to put the money into circulation in Europe, it apparently being the understanding of Lee and Loraine that it was only to be posted as collateral to secure loans. Abiding by Loraine's instructions, Roe gave Terry $5,000.

Roe subsequently exchanged $5,900 in counterfeit bills into Swiss francs at four banks in Geneva. At the fifth bank he visited the cashier refused to exchange a substantial number of bills, asserting that they were counterfeit. In view of this development, Roe telephoned Loraine and stated that he could not send him the $55,000 which Loraine had requested. Loraine replied that without the money he would be in trouble with his suppliers.

Terry returned to Los Angeles about July 28, 1965, and gave Loraine an account of Terry's meeting with Roe. Loraine later had a conversation with Randall at Hargitay's house in Los Angeles. He told Randall that he could not understand why Roe was passing the counterfeit money instead of using it for collateral, unless Roe was trying to implicate Loraine. Loraine also told Randall that the money had been made to order and that about ten million dollars worth of one hundred dollar bills had been made.

Having in mind the asserted weaknesses in the Government's case, as developed in detail in Loraine's briefs on appeal, we hold that the evidence tending to support the verdict, only the highlights of which are reviewed above, amply supports the verdict on count one (conspiracy) and count three (transfer and delivery) of the indictment. We need not consider whether the evidence pertaining to count two (possession and concealment) was sufficient, since the sentence on count two is consurrent with that on count three. See *Lawn v. United States*, 355 U.S. 339, 359; *Sinclair v. United States*, 279 U.S. 263, 299; *Browning v. United States*, 9 Cir., 366 F.2d 420, 422.

At the close of the Government's case counsel for Loraine moved to dismiss the indictment on the ground that, during the presentation of the Government's evidence to the grand jury, the United States Attorney wilfully suppressed evidence which was in his possession. This evidence, counsel asserted, would have had a material bearing upon the credibility of three witnesses who

appeared before the grand jury. Specifically counsel charged, the United States Attorney failed to reveal to the grand jury that witness Max Desatnick had had a criminal record and was then under indictment in three or four additional cases; failed to reveal that witness James McKee had been charged with embezzling $85,000 from Cadco Company of Great Britain; and failed to reveal that witness Randall had been permanently enjoined by the State of New York from selling or dealing in securities. Loraine contends that the trial court erred in denying this motion.

The suppression by the prosecution at the trial, of evidence favorable to an accused violates due process where the evidence is material either as to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. *Bardy v. Maryland*, 373 U.S. 83, 87; *United States ex rel. Thompson v. Dye*, 3 Cir., 221 F.2d 763, 765. Evidence available for use at the trial may be material within the meaning of this rule, even though it goes only to the credibility of a witness. See *Napue v. Illinois*, 360 U.S. 264, 269-270. It is usually proper and desirable that the Government should bring out on direct examination, at the trial, the criminal record of its witnesses or any circumstances tending to undermine their credibility, although, on objection of the accused, such evidence may be excluded on direct examination. See *United States v. Brill*, 2 Cir., 350 F.2d 171, 174; *United States v. Freeman*, 2 Cir., 302 F.2d 347, 350.[4]

However, the duty of prosecuting authorities at the trial, and their duty when presenting a case before a grand jury, are not necessarily the same. Thus, an indictment, if returned by a legally constituted and unbiased grand jury and valid on its face may not be dismissed because it is based upon hearsay testimony (*Costello v. United States*, 350 U.S. 359, 363), incompetent evidence (*Holt v. United States*, 218 U.S. 245, 248), or illegally seized evidence (*United States v. Blue*, 374 U.S. 251, 255, n. 3).

Similarly, we hold that the trial court did not err in refusing to invalidate a federal indictment because the Government did

[4]During Desatnick's direct testimony at the trial, Government counsel attempted to place before the jury Desatnick's unsavory background by inquiring into his criminal record. However, counsel for Loraine objected on the ground that the Government was attempting to impeach its own witness, and the objection was sustained.

not produce before the grand jury all evidence in its possession tending to undermine the credibility of the witnesses appearing before that body. Loraine was accorded the full protections of the Fifth and Fourteenth Amendments when, at the trial on the merits, he was permitted to expose all the facts bearing upon his guilt or innocence.

Loraine argues that the trial court erred in denying his motion for dismissal of the indictment upon the ground that there had been publicity and news reporting incident to the trial which was not accurate or truthful and did not fairly reflect the court proceedings.

During the extensive voir dire examination of the jury, counsel for co-defendant Friedland, in the absence of the jury, moved for a mistrial on the ground that an article which appeared in a local newspaper reported that Friedland's wife had testified as to misconduct on the part of jurors. Counsel for Loraine joined in that motion.

The jury was called back and the trial court asked that any juror who had read in a newspaper or listened to a broadcast about the trial within the last thirty-six hours hold up his hand. No hand appeared and the motion was denied A similar motion was made the next day, based on a similar article in another local newspaper. The motion was denied without an inquiry of the jury being made.

A day or two later two motions for mistrial were made on the ground that an article which appeared in a Los Angeles newspaper contained "misstatements and inaccuracies" about the trial. Counsel did not state what had been misstated or was inaccurate, nor that Loraine had been prejudiced and, if so, how. Both motions were denied.

At the close of the Government's case counsel for Loraine joined in a motion renewing the prior motion for a mistrial and made a new motion to dismiss the indictment. Both motions were made on the ground that there had been continuous inaccurate, untruthful publicity and news reporting which did not fairly reflect the court proceedings. A sheaf of newspaper clippings was submitted to the court. Again, counsel did not state what was inaccurate and untruthful about the publicity, nor that Loraine

or any other defendant had been prejudiced and, if so, how. The motions were denied.

In arguing on appeal that the trial court erred in denying the latter motions, counsel for Loraine again refrains from explaining what was inaccurate or untruthful about the publicity, or wherein Loraine was prejudiced by such publicity. Counsel does not even assert that any juror saw or heard any of this publicity. Nor does he take note of the fact that the trial court assiduously asked the jury not to read anything or listen to any broadcasts about the trial.

We find here no circumstances remotely approaching those which brought about reversals in *Sheppard v. Maxwell*, 384 U.S. 333, and *Estes v. Texas*, 381 U.S. 532. The trial court did not err in denying the motions for mistrial and the motion to dismiss the indictment.

Affirmed.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding;

That my business address is 215 West Fifth Street, Los Angeles, California 90013, that on AUGUST , 1968, I served the within PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Dennis Henry Loraine v. United States of America) on the following parties by depositing the designated copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the addresses as follows:

SOLICTTOR GENERAL OF THE UNITED STATES
WASHINGTON, D. C. [THREE COPIES]

UNITED STATES ATTORNEY
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012 [ONE COPY]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on AUGUST , 1968, at LOS ANGELES, CALIFORNIA.

_____

Subscribed and sworn to before me

this day of , 1968.

_____

Notary Public in and for the
State of California.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 420

DENNIS HENRY LORAINE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted by a jury in the Central District of California of conspiracy to possess and conceal counterfeit money (count 1), and substantive offenses of possession and concealment of $376,200 in counterfeit (count 2), and transfer of counterfeit bills to one Terry (count 3) (18 U.S.C. 472, 473). On March 11, 1966, petitioner was sentenced to five years' imprisonment and fined $10,000 on Count 1, and to six years' imprisonment on Count 3, to run concurrently with a six-year sentence on Count 2 (R. 34).

The judgment of the court of appeals affirming the conviction was entered on June 4, 1968 (396 F. 2d 335). A petition for rehearing was denied on July 18, 1968. The petition for a writ of certiorari, filed on August 19, 1968, is out of time under Rule 22–2 of the Rules of this Court. In all events, there is no occasion for further review.

319-858—68

1. The evidence is summarized in detail in the opinion of the court of appeals. Petitioner's challenge to its sufficiency presents no issue warranting review by this Court.

In late spring 1965, petitioner and others attempted to obtain large amounts of counterfeit money to help one Roe recover from financial difficulties (R.T. 1179–1182, 1185–1186, 1210, 1227). In July, 1965, Terry told petitioner that $500,000 in counterfeit one hundred-dollar bills could be obtained on short notice through Lee, an attorney (R.T. 2094–2095). On July 26, in accordance with petitioner's instructions, Terry met Lee at the Los Angeles airport and took him to a house where petitioner was staying (R.T. 1820, 1823). Lee brought a briefcase from his car into petitioner's bedroom (R.T. 1824–1825). While petitioner was in an adjoining room, Terry observed a number of hundred-dollar bills in Lee's open briefcase (R.T. 1825–1832). Later that day, petitioner told Terry that Roe, who was then in Switzerland, wanted to see Terry regarding the film "Blues for Mr. Charley" (R.T. 1837–1839). Petitioner also asked Terry to do him a great favor by delivering some papers to Roe (R.T. 1841). Lee and Terry then went to Terry's motel room (R.T. 1842–1843). While Terry was packing, Lee handed him three packages, each the size of a large book, light in weight, and tightly wrapped in newspaper (R.T. 1843–1845). Terry put the packages in his overnight bag and left that evening by plane for Geneva (R.T. 1846–1848).

On the same day (July 26) petitioner told Randall that Terry was carrying about $500,000 in counterfeit

one hundred-dollar bills to Roe in Switzerland (R.T. 1387, 1392). Petitioner asked Randall to telephone Roe and tell him that Terry was on his way, that there would be no charge for the counterfeit which was defective, that he should pay Terry $5,000 in genuine bills as a fee for delivering the counterfeit, and that after he had cashed the counterfeit money he was to send petitioner $55,000 to cover the balance due to the suppliers of the counterfeit (R.T. 1392–1393, 2108–2109). Randall telephoned that information to Roe. He told Roe that petitioner had rejected $200,000 of the counterfeit money as defective, but that Terry would deliver $300,000 in well-printed counterfeit, as well as $75,000 of the defective counterfeit in case Roe could "do anything with it" (R.T. 2111–2112).

On the morning of July 28, Terry arrived at Roe's office in Lausanne, Switzerland, and told Roe that he had been instructed to give him the contents of his briefcase (R.T. 2118, 2122–2123). Terry placed the three packages on the table and stepped out of the office for a moment. When Terry returned, Roe was examining a large pile of one hundred-dollar bills (R.T. 1863–1865, 2127–2128). Terry told Roe that the counterfeiting was done in a great hurry at petitioner's request, that the ink had not dried before the packages were put together, that the paper was not the best quality, and that the numbers on some of the bills were blurred (R.T. 2123). Terry informed Roe that Lee had advised not to put the money in circulation in Europe; Lee and petitioner apparently understood that the money was to be posted as collateral to secure loans (R.T. 2124, 1210). In accord-

ance with petitioner's instructions, Roe paid Terry $5,000 in genuine money (R.T. 2129).

Thereafter Roe exchanged $5,900 in counterfeit bills for Swiss Francs at four banks in Geneva; a cashier at a fifth bank, however, refused to exchange a number of bills because they were counterfeit (R.T. 2133–2138). Roe then telephoned petitioner in Los Angeles that he could not send the $55,000 which petitioner had requested. Petitioner replied that this would cause him great difficulty with his suppliers (R.T. 2139, 2142).

On the basis of this evidence, the jury was justified in finding petitioner guilty on all counts.

2. At the close of the government's case petitioner's counsel joined in a motion to dismiss the indictment, on the ground that the government had suppressed evidence which would have affected the credibility of government witnesses before the grand jury. Counsel alleged that the government failed to reveal to the grand jury that witness Desatnick had a criminal record and was then under indictment in other cases; that witness McKee had been charged with embezzling $85,000 from Cadco Company of Great Britain; and that witness Randall had been permanently enjoined by the State of New York from selling or dealing in securities (R.T. 2576–2578). The court denied the motion.

Contrary to petitioner's contention, the decision below is not in conflict with *Brady* v. *Maryland*, 373 U.S. 83, and *Giles* v. *Maryland*, 386 U.S. 66. Those cases dealt only with information which must be made available to a defendant for trial, where his

guilt or innocence is ultimately to be determined. A grand jury presentation, on the other hand, is a preliminary proceeding for the purpose of determining only whether an accused should be held for trial. It is unnecessary at that stage to delve into all collateral matters which may possibly affect the credibility of government witnesses.[1] The court below correctly held that the failure to present this impeachment material, which was available to petitioner at trial, to the grand jury did not invalidate the indictment.

3. In a telephone conversation with Randall, Roe said that petitioner had promised to get him a letter of credit for $150,000 from a bank in Jackson, Mississippi (R.T. 1337–1338). Randall, a government witness, testified that he told Roe that if petitioner had acquired the charter of a bank, it was a non-existent bank, and that a letter of credit on that bank would have no validity (R.T. 1339). Randall also testified that when he talked to petitioner about the possibility of Roe committing suicide, he told petitioner, "I think you are a blackguard" (R.T. 1342). Petitioner's counsel moved to strike that remark and asked for a mistrial (R.T. 1342, 1352). The court refused to grant a mistrial, and instructed the jury as follows (R.T. 1372–1374):

[1] Although petitioner argues here that the government should have impeached its own witnesses at the grand jury proceeding, when the government attempted to place the criminal record of one witness before the trial jury, petitioner's counsel objected on the ground that the government was attempting to impeach its own witness. The objection was sustained (R.T. 835–837, 852).

> * * * obviously no defendant in this case is on trial here for any offense or any wrongdoing save the charges against them made by the indictment * * *.
>
> Nothing which has been introduced in evidence and no testimony, is before this jury which in anywise indicates * * * that there was any non-existent bank, or that any defendant in any way held out to anyone or did anything about any non-existent bank in Mississippi or elsewhere.
>
> * * * * * *
>
> I say that because it is my impression that what this witness [Randall] testified to * * * indicates that he had the opinion of the defendant Loraine, that if the defendant Loraine had referred to a letter of credit it would be upon a non-existent bank. He was not testifying that there was in fact use of a non-existent bank. He was saying what he thought about the defendant Loraine.
>
> * * * * * *
>
> Similarly, when this witness, in reciting a conversation with Mr. Loraine, said he told Mr. Loraine, or words to the effect, "You are a blackguard." That doesn't prove anything except that according to this witness that is what was said during that conversation by this witness.

This minor incident should not be magnified beyond its significance in a long and hotly contested trial. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 239–240. The court's instructions fully cured any prejudice which may have resulted from that testimony.

4. During the trial, petitioner's counsel joined in co-defendant Friedland's motion for a mistrial on the ground that a local newspaper article reported that Friedland's wife had testified as to misconduct on the part of jurors. When questioned by the trial court, however, none of the jurors indicated that he had read a newspaper or listened to a broadcast about the trial, and the motion was denied (R.T. 180–187). At the close of the government's case, petitioner's counsel joined in renewing the prior motion for a mistrial, and in a new motion to dismiss the indictment on the ground that there had been "a continuation of publicity and news reporting which is not accurate, truthful, and does not fairly reflect the court proceedings, but contains a mass of inaccurate statements" (R.T. 2591). The court also denied these motions (R.T. 2592).

Petitioner made no showing that the jurors saw the publicity, that it related to him, that it was inaccurate and untruthful, or that he was prejudiced in any way. In these circumstances, the trial court properly denied the motions for mistrial. The situation here is totally unlike that in *Sheppard* v. *Maxwell*, 384 U.S. 333, and *Estes* v. *Texas*, 381 U.S. 532, where there was massive newspaper publicity as well as radio and television coverage, and the jurors admitted their exposure to this publicity.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED M. VINSON, JR.
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

SEPTEMBER 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968